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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,058	12/14/2001	Jason P. McDevitt	03768/09388	6225

7590 10/22/2003

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EXAMINER	
PATTEN, PATRICIA A	
ART UNIT	**PAPER NUMBER**
1654	

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/017,058	MCDEVITT ET AL.	
	Examiner	Art Unit	
	Patricia A Patten	1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-15 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-15 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) n/a .
4)☐ Interview Summary (PTO-413) Paper No(s). _____ .
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: .

DETAILED ACTION

Claims 1-15 are pending in the application and were examined on the merits.

Information Disclosure Statement

The Information Disclosure Statement has been considered in-part at this time. The Office has received the documents to be considered, however, these documents have not been scanned into the system and therefore the Examiner does not have all of the references to consider. The Examiner called the Attorney of record on 10/20/03 and asked the Attorney to fax the 1449 forms. The Attorney agreed, and therefore the US patented literature which was listed on the PTO-1449 forms has been considered, as well as one non-patented literature document which was faxed to the Office. The remainder of the references will be considered when the references are scanned into the system.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Valentine et al. (US 5,447,505).

Valentine et al. (US 5,447,505) disclosed that silk and wool surgical wound dressings (protein-containing fibrous components) were listed in the British Pharmaceutical Codex in 1923 (col.1, lines 1-15).

Valentine et al. did not specifically teach wherein a protease was targeted to be removed, wherein the protease is attracted and entrapped by the protein-containing fibrous components) or wherein the protein-containing material was interwoven with a non-protein containing component such as cotton fibers.

It is deemed that the placement of the protein-containing fibrous components to the wound-site, and removal of said components from the wound, would have intrinsically performed the claimed methods. Although Valentine et al. did not explicitly teach wherein the bandages were removed from the wounds, it is well known in the art that bandages are applied until ample healing has occurred and then subsequently removed. It is deemed that the protease would be removed as an intrinsic consequence of the removal of the bandages because the prior art is employing the same protein-containing fibrous component (silk/wool) which is being placed on a wound. It is noted that the step which recites 'determining the particular protease that will be removed from the wound site' is a mental step which is obviated by the method for dressing a wound with silk or wool. This mental step is not a factor in determining patentability because weather or not one determined a protease which was going to be removed is not part of the physical step of placing the dressing on the wound. Therefore, even though the intended use of the prior art methods was to place the bandage on the wound to aid in wound repair, the method obviates the claimed invention because the same action was carried out, regardless of the intent of the action.

Although Valentine et al. did not specifically teach wherein non-protein fibers were used and/or interwoven with protein-containing fibers (i.e., wool and cotton or silk and cotton for example), it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the dressings since each individual

fibrous dressing was well known in the art to aid in wound dressing. This rejection is based on the well established proposition of patent law that no invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients, *In re Sussman,* 1943 C.D. 518. Any mixture of the components embraced by the claims which does not exhibit an unexpected result (e.g., synergism) is therefore *prima facie* obvious.

Claims 1-8 and 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lock (US 3,975,567).

Lock (US 3,975,567) disclosed that cotton wool dressings were well known in the art for wound repair. Lock explained that these dressings were removed to allow inspection and treatment of the wound (col.1, lines 9-26).

Lock did not specifically teach wherein a protease was targeted to be removed, or wherein the protease is attracted and entrapped by the protein-containing fibrous components).

Again, it is deemed that the placement of the protein-containing fibrous components to the wound-site (in this case a cotton wool pad), and removal of said components from the wound, would have intrinsically performed the claimed methods. Although Lock did not explicitly teach wherein the bandages were removed from the

wounds, it is well known in the art that bandages are applied until ample healing has occurred and then subsequently removed. It is deemed that the protease would be removed as an intrinsic consequence of the removal of the bandages because the prior art is employing the same protein-containing fibrous component (silk/wool) which is being placed on a wound. It is noted that the step which recites 'determining the particular protease that will be removed from the wound site' is a mental step which is obviated by the method for dressing a wound with silk or wool.

The claimed method is deemed a new use of an old method which is obvious over the prior art method of placing fibrous materials such as cotton, silk and wool, or interweaves thereof onto a wound to aid in wound repair. Although Applicants may have found a new property which results from the placement of fibers such as cotton, wool, silk or combinations thereof, as it was indicated *supra*, these properties would have resulted as an *intrinsic consequence* of placing the cotton, wool, silk or blends thereof onto a wound.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

No Claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia A Patten whose telephone number is (703) 308-1189. The examiner can normally be reached on 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Patricia A Patten
Examiner
Art Unit 1654

10/20/03

PATRICIA PATTEN
PATENT EXAMINER